

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

PCT

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/011606

International filing date (day/month/year)
15.10.2004

Priority date (day/month/year)
31.10.2003

International Patent Classification (IPC) or both national classification and IPC
B65D1/02

Applicant
NESTLE WATERS MANAGEMENT & TECHNOLOGY

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office - P.B. 5818 Patentlaan 2
NL-2280 HV Rijswijk - Pays Bas
Tel. +31 70 340 - 2040 Tx: 31 651 epo nl
Fax: +31 70 340 - 3016

Authorized Officer

Bridault, A

Telephone No. +31 70 340-3224



Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 1-17 partially

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 1-17 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☐ no international search report has been established for the whole application or for said claims Nos.
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/011606

Box No. V Reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-17
	No: Claims	
Inventive step (IS)	Yes: Claims	1-17
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-17
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item III.

The claims relate to a container defined inter alia by reference to the following parameter:

ratio weight of the walls over weight of the bottom.

The use of this parameter in the present context is considered to lead to a lack of clarity within the meaning of Article 6 PCT. It is impossible to compare the parameter the applicant has chosen to employ with what is set out in the prior art, since the parameter is not used in the prior art. Moreover, the value claimed for this parameter can result from different factors, such as the relative thicknesses or the relative extent (surface area) of the bottom and walls.

Because of this lack of clarity, no meaningful complete search could be performed. Consequently, the search has been performed while disregarding this parameter, and focused instead on containers with a thin bottom. The same approach has been kept for the purpose of this written opinion.

Re Item V.

1 The following documents are referred to in this communication:

D1 : FR 2 830 844 A
D2 : US 3 733 309 A
D3 : US 5 398 826 A

2.1 Document D1, which is considered to represent the most relevant state of the art, discloses a container from which the subject-matter of claim 1 differs by the provision of at least three feet. D1 is almost silent about the relative thickness of the bottom (it only mentions the possibility of having a somewhat thicker bottom (see page 7, lines 24-26). The ratio volume of the body per gram of PET is 166 (see page 7, lines 1-4).

The subject-matter of claim 1 is therefore novel (Article 33(2) PCT).

2.2 The problem to be solved by the present invention may be regarded as using less

material for the manufacture of the container.

The solution to this problem proposed in claim 1 of the present application is considered as involving an inventive step (Article 33(3) PCT) because no available prior art document shows this type of container with feet, with a relatively thin bottom, and with a ratio volume of the body per gram of PET comprised between 80 and 120 (this ration is between 5 and 200 in D2, between 40 and 200 in D3).

- 2.3 Claims 2-17 are dependent on claim 1 (see Item VII for claim 6) and as such also meet the requirements of the PCT with respect to novelty and inventive step.

Re Item VII.

- 1 Claim 6 comprises all the features of claim 1 and is therefore not appropriately formulated as a claim dependent on the latter (Rule 6.4 PCT).
- 2 The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
- 3 FR 2 830 844, which appears to represent a prior art closer than the cited FR 2 772 720 should be identified in the description and the relevant background art disclosed therein should be briefly discussed.

Re Item VIII.

1. The application does not meet the requirements of Article 6 PCT, because the claims are not clear.

The subject-matter of the claims is defined, inter alia, by the following parameter used in claim 1:

ratio of the weight of the walls over the weight of the bottom.

This parameter is not generally used in the art, and therefore the skilled reader is not

presented with enough information to perform the invention. The parameter is moreover so vague that a number of embodiments are encompassed by the claims, for which no basis is to be found in the description. In fact, the claimed ratio could be obtained by merely adjusting the size (surface area) of the bottom relative to the one of the walls in a common bottle. The subject-matter of the invention is different, namely this parameter is obtained by making the bottom thinner than usual.

To remove this objection, the independent claims should be amended so as to be fully supported by the description, i.e. the following features should be added to them:

- the walls of the body have a thickness of less than 100 μm (see claim 2);
- the bottom has a thickness between 100 and 200 μm (see first paragraph of page 3 of the description); and
- each foot has a wall thickness of 50 to 150 μm (see claim 4).

Such amended claims would meet the requirement of clarity, since the combination of these thicknesses and of the claimed ratio would be sufficient to fairly delimit the range of containers claimed.

2. Some inconsistencies between the claims and the description lead to doubt concerning the matter for which protection is sought, thereby rendering the claims unclear (Article 6 PCT). This is in particular the case for the mention of PEN (page 6), since the independent claim only refers to PET.
3. On page 10, the description mentions "ratios S2 on S1", without having first defined S1 and S2.